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INFO RUCNFUR/DARFUR COLLECTIVE
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UNCLAS KHARTOUM 001240

DEPT FOR AF/SPG, A/S FRAZER, SE WILLIAMSON
NSC FOR BPITTMAN AND CHUDSON
ADDIS ABABA FOR USAU
DEPT PLS PASS USAID FOR AFR/SUDAN

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: ASEC PGOV PREL KPKO SOCI AU UNSC SU
SUBJECT: DARFURI LAWYERS DISMISSIVE OF NEW DARFUR CHIEF PROSECUTOR

¶1. (SBU) Summary: On 13 August Poloff met with Farouq Adam, a member of the Darfuri Bar Association to discuss the appointment of Nimer Ibrahim Mohamed as the Chief Prosecutor of war crimes in Darfur. Adam noted that the absence of war crimes and genocide from Sudan's legal code, along with Mohamed's status as a longtime NCP insider, revealed the appointment was not a good faith effort to attain justice, but rather an attempt (albeit a feeble one) to thwart the ICC indictment of President Bashir. Abdulaziz Sam, Legal Secretary of the Transitional Darfur Regional Authority (TDRA), concurred that the move was an obvious tactical maneuver and not a serious effort to attain justice in Darfur. End Summary.

NCP INSIDERS

¶2. (SBU) Sam stated that he and others with whom he had spoken in the legal community were unfamiliar with Mohamed, other than the fact he is an NCP member. "He has just appeared" on the scene, he noted. Adam, who had conducted some background research at the request of poloff, stated that Mohamed spent his entire career with the state legal apparatus, having joined the Ministry of Justice after graduating from the Faculty of Law at the University of Khartoum in 1970. He has served in a variety of posts, including Legal Advisor to the Gezira Scheme, the massive agricultural irrigation system. Adam noted that this signified Mohamed's status as an NCP loyalist. Adam added that as the Gezira Scheme is a pillar of the Sudanese economy, the role of its Legal Advisor would not be entrusted to an outsider. Adam said that Mohamed's appointed aides, identified in the Ministerial Decree as Kamal Mahjoub Ahmed, Al Hadi Mahjoub Makawi, and Mamoun Meki, were also products of the state legal system, although younger and more inexperienced than their boss. He stated that he expected them all to be "yes-men".

NOT A SERIOUS EFFORT

¶3. (SBU) Both Adam and Sam dismissed the appointment of Mohamed as an obvious tactical ploy to circumvent the ICC and to address the recommendation of the Arab League. Sam told poloff that Mohamed will have neither the will, nor the power to impose justice in Darfur. He asserted that even a serious attempt to investigate on his part would be thwarted by restricted access and non-cooperation, not to mention the added problem of the time that has passed since the crimes were committed. "What exactly is he going to do?" he asked rhetorically. Adam stated that the entire legal community considered the effort to be nonsense, because the prosecutor and his aides were not neutral but in fact part of the state apparatus accused of war crimes in Darfur. He observed it was no different than previous half-hearted efforts to achieve justice, including the floundering special court established in 2005.

BOUNDED TO FAIL

¶4. (SBU) Adam predicted that for a number of reasons the appointment of Mohamed would fail to get Bashir off the hook with the ICC (Note: According to the ICC statute, if credible trials for war crimes are held domestically, the ICC charges are dropped. End Note.) First, he said, Sudan lacks statutes against war crimes or genocide in its legal code. Secondly, the trials could not be considered credible since they were being prosecuted by the legal apparatus of the regime that is itself accused of atrocities. And third, the timing of the appointment makes it blatantly obvious that the regime is more interested in thwarting the ICC than attaining justice in Darfur. Adam stated that the ICC and the international community at large would not be fooled by such bad faith efforts.

¶5. (SBU) Comment: The appointment of the chief prosecutor is the latest manifestation of the GOS's penchant for form over substance and process over results - and is too little too late. Clearly the current and future ICC indictments (not only of Bashir but also of Harun and Kushayb) put the regime in an incredibly awkward situation that it cannot fully address without risk of implosion. On the one hand, the regime feels it cannot turn Harun and Kushayb over to the ICC for fear they will "talk." But on the other, it can't trust truly neutral Sudanese prosecutors to try them in Sudan, lest the process get beyond the regime's control and be used against it by its enemies. In the end the regime may ignore and condemn the ICC as a political tool of the West, whether or not an arrest warrant against President Bashir is issued.

FERNANDEZ